

ANDREW LOBO,)
)
Plaintiff,) 03:12-cv-00594-HU
)
vs.) FINDINGS AND
) RECOMMENDATIONS
CORRECTIONS OFFICER TUYEN TU,)
SARGENT DAVID BOWMAN, CHRISTINE)
POPOFF, JOHN AND JANE DOES #1-10,)
)
Defendants.)

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Bowman, and Christine Popoff

1 HUBEL, J.,

2 Plaintiff Andrew Lobo ("Plaintiff") moves the court for leave
 3 to file a Second Amended Complaint pursuant to Federal Rule of
 4 Civil Procedure ("Rule") 15(a). Plaintiff seeks to "individually
 5 name several individual defendants who are now identifiable and to
 6 add the State of Oregon as a defendant in Plaintiff's second claim
 7 (negligence)." (Van Ness Decl. ¶ 8.) Defendants Tuyen Tu, David
 8 Bowman and Christine Popoff (collectively, "Defendants") do not
 9 object to the amendments naming individual Doe defendants. However,
 10 to the extent Plaintiff seeks to add a negligence claim against the
 11 State of Oregon ("the State"), Defendants oppose the amendment
 12 arguing it would be futile because the State would be entitled to
 13 sovereign immunity. Pursuant to Local Rule 7-1(d)(1), the Court
 14 finds Plaintiff's motion appropriate for resolution without oral
 15 argument and hereby vacates the hearing on June 28, 2012. For the
 16 reasons set forth below, Plaintiff's motion (Docket No. 18) for
 17 leave to file a Second Amended Complaint should be **GRANTED** in part
 18 and **DENIED** in part.

19 ***I. PROCEDURAL BACKGROUND***

20 On April 5, 2012, Plaintiff, an inmate at the Coffee Creek
 21 Correctional Facility ("CCCF"), filed this civil rights action
 22 under 42 U.S.C. § 1983, alleging violations of the Eighth and
 23 Fourteenth Amendments. In his original Complaint, the only named
 24 defendants (Tu, Bowman, Popoff, and "Jane and John Does #1-10")
 25 were law enforcement officers at CCCF.

26 Plaintiff's First Amended Complaint, filed on April 11, 2012
 27 as a matter of right, contained identical allegations and added a
 28

Amendment "bars suits against a state or its agencies, regardless of the relief sought, unless the state unequivocally consents to a waiver of its immunity." *Wilbur v. Locke*, 423 F.3d 1101, 1111 (9th Cir. 2005) (citation omitted). In this case, the State declines to waive immunity. Thus, to the extent Plaintiff seeks to assert a negligence claim against the State, I deny his request for leave to amend for a second time. *See, e.g., Allen v. Oregon*, No. 3:11-cv-218-PK, 2012 WL 698361, at *7-8 (D. Or. Jan. 31, 2012) (dismissing the plaintiff's negligence claim because the State of Oregon was entitled to Eleventh Amendment immunity absent either a waiver of immunity or consent to be sued in connection with such a claim).

III. CONCLUSION

For the foregoing reasons, Plaintiff's motion (Docket No. 18) for leave to file a Second Amended Complaint should be **GRANTED** in part and **DENIED** in part.

IV. SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due **July 2, 2012**. If no objections are filed, then the Findings and Recommendation will go under advisement on that date. If objections are filed, then a response is due **July 19, 2012**. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

Dated this 12th day of June, 2012.

/s/ Dennis J. Hubel

DENNIS J. HUBEL
Unites States Magistrate Judge